

# THE *Dan Smoot Report*



DAN SMOOT

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## HOW TO CURB THE COURT

On June 12, 1967, the Warren Court overturned a \$500,000 libel judgment against the Associated Press, which had been won by Edwin A. Walker (Major General, USA, Resigned) in a jury trial. This decision inflicted upon Walker a gross injustice which was clearly motivated by the judges' animosity toward Walker; and it is a blatant violation of the seventh article of the American Bill of Rights.

On September 30, 1962, students at the University of Mississippi rioted against federal marshals sent there to force the University to enroll James Meredith. Edwin A. Walker pleaded with the students to cease their violence. But Van H. Savell, a 21-year-old cub reporter for the Associated Press, falsely reported that Walker *assumed command of the mob and led them in a charge against U. S. Marshals*.

On the basis of Savell's false report, Walker was arrested; spirited out of the state without a court order to a federal institution for the criminally insane; charged with insurrection, assaulting U. S. officers, sedition, and seditious conspiracy; held for 6 days without opportunity to make bail which had been fixed at the outrageous sum of \$100,000; not permitted to have a hearing for habeas corpus — all on an affidavit of a government psychiatrist who had never seen Walker, but had "read news reports."

Later, all charges against Walker were dropped; and a government-appointed psychiatrist found him to be of sound mind and of superior intelligence.<sup>(1)</sup> The fact remained, however, that the government's action, based on a false AP story, branded Walker a lunatic and a criminal.

Walker sued the Associated Press. At a trial in Fort Worth, Texas, a jury found that the Associated Press report was false, not fair comment, and not published in good faith as the honest opinion of the writer. The decision was upheld by the Court of Civil Appeals and the Supreme Court of Texas.

The Warren Court, however, without referring to the finding of the jury, said it found not "the slightest hint of a severe departure from accepted publishing standards" on the part of the Associated Press,<sup>(2)</sup> and relieved AP of responsibility for the act of its assigned reporter by a finding that he "gave every indication of being trustworthy."

The Court said that the Associated Press story about Walker "would not have seemed unreasonable to one familiar with General Walker's prior publicized statements on the underlying controversy."<sup>(2)</sup> In

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other words, the Warren Court thinks the Associated Press was justified in distributing lies about Walker, because the Court justices believe that Walker might have been capable of committing the acts which the Associated Press falsely attributed to him.

In our system only a jury, from direct confrontation with witnesses, has authority to make findings of fact in such cases. In preempting the functions of a jury, overturning its findings of fact, the Warren Court violated the Seventh Amendment to the Constitution, which says:

**"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States . . . ."**

The Warren Court found no reversible error in the Walker case or any legal grounds for overturning the libel judgment against the Associated Press. It reversed the jury simply because it did not like the jury's decision — thus depriving Walker of his Seventh-Amendment right to trial by jury.

The Court handled *Associated Press v. Walker* and *Curtis Publishing Company v. Wallace Butts* as one case. Whereas it overturned Walker's libel judgment against the Associated Press, the Court sustained Butts' libel judgment against *The Saturday Evening Post* (Curtis Publishing Company). Justice Hugo Black — who thinks the press should have absolute immunity from libel judgments — concurred in the Walker decision, but dissented from the Butts decision. In his dissent, Black said:

**"Here the Court reverses the case of *Associated Press v. Walker*, but affirms the judgment of *Curtis Publishing Co. v. Butts*. The main reason for this quite contradictory action, so far as I can determine, is that the Court looks at the facts in both cases as though it were a jury and reaches the conclusion that the Saturday Evening Post, in writing about Butts, was so abusive that its article is more of a libel at the constitutional level than is the one by the Associated Press. That seems a strange way to erect a constitutional standard for libel cases. If this precedent is followed, it means that we must in all libel cases hereafter weigh the facts and hold that all papers**

**and magazines guilty of gross writing or reporting are constitutionally liable, while they are not if the quality of the reporting is approved by a majority of us. In the final analysis, what we do in these circumstances is to review the factual questions in cases decided by juries — a review which is a flat violation of the Seventh Amendment."**<sup>(3)</sup>

In the *final* analysis, the Warren Court acted as a jury, in violation of the Constitution, to decide against Walker, because the judges dislike Walker — dislike him so much that they approve what the Associated Press reported about him, even though the AP report was false and extremely damaging, as found by a trial jury which holding is final under the Constitution, but apparently not binding on the Warren Court.

On June 16, 1967 — 4 days after the Warren Court had decided the Walker case in favor of the Associated Press — AP distributed a column by James Marlow, extravagantly praising the Court:

**"The Supreme Court, since Earl Warren became chief justice in 1953, has done more to liberalize American life than any court in history, but not because it was radical in any sense . . . ."**

**"In the course of its courageous facing of realities, the court has put new life and new meaning into the Constitution . . . ."**

**"Some of its critics think it is rewriting the Constitution. But in a fast-changing world, to stand still is to die. The Warren court has chosen not to stand still."**<sup>(4)</sup>

On May 8, 1967, the Warren Court reversed three convictions of individuals for distributing obscene material in violation of state laws.<sup>(5)</sup> On June 12, 1967, the Court invalidated a Virginia state law against racially mixed marriages, and suggested that similar laws in 15 other states are unconstitutional.<sup>(6)</sup>

These are recent examples of many Warren Court decisions which invalidate state laws. Yet, the Supreme Court has no authority to review state legislation. It has been illegally assuming such authority since 1905, when, in *Lochner v. New York*, it overturned a New York state law regu-

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lating working hours in bakeries. Justice John Marshall Harlan, (grandfather of the present Supreme Court Justice of the same name) dissented in *Lochner*, saying:

"No evils arising from . . . [state] legislation could be more far reaching than those that might come to our system of government if the judiciary, abandoning the sphere assigned to it by the fundamental law, should enter the domain of legislation, and upon grounds merely of justice or reason or wisdom annul statutes that had received the sanction of the people's representatives . . . ." <sup>(7)</sup>

What would Justice Harlan have said about the California case of 1967?

In 1963, the California legislature passed the Rumford Act to prohibit racial discrimination in the sale or renting of housing. The law eliminated the freedom of individuals to sell or not sell, rent or not rent, their private property as they pleased.

In 1964, California voters, by a 2 to 1 majority, voided the Rumford Act by approving a state constitutional amendment which prohibited the state government from limiting or abridging, directly or indirectly, a property owner's right to decline to sell, lease, or rent his property to any person, as the property owner chooses. In May, 1967, the Warren Court, by a 5-4 decision, held that the amendment <sup>(8)</sup> violates the 14th Amendment to the U. S. Constitution.

Control of private housing was no part of the intent of the 14th Amendment. The Warren Court had no valid authority to hear this California case. Yet, 5 Warren Court justices assumed authority to nullify the legally expressed will of millions of California voters.

The 1954 *Brown v. School Board* decision (in which the Warren Court set the precedent for reinterpreting the Constitution to suit the passing whims of a court majority); all Supreme Court decisions involving religious practices in public institutions; all which have made it impossible for state and local governments to prosecute communists; all which have illegally handicapped law enforcement in dealing with criminals and mobs

— all Supreme Court decisions which corrupt or change the meaning of our Constitution and leave the entire nation at the mercy of a court majority were, of course, made in cases that went to the court *on appeal*.

Yet, there is no right to appeal a case to the Supreme Court except as an act of Congress confers it; and the Supreme Court has no authority to hear any case on appeal unless Congress has specifically granted such authority. This rule (based on Article 3, Section 2, Clause 2 of the Constitution) was enunciated by the Supreme Court itself in 1796, 1810, 1868, 1878, 1885, 1892, 1896, 1908, 1934, and 1943. <sup>(9)</sup>

Five men, appointed for life, change our Constitution and laws as they please. Until we do something about the Court, we do not have lawful constitutional government. We are ruled by an all-powerful, irresponsible, judicial oligarchy.

What should be done?

*Congress has absolute constitutional authority to limit or abolish the appellate jurisdiction of all federal courts, including the Supreme Court.*

In 1964, the House of Representatives was in a mood to exercise this authority. The House passed the Tuck Bill (by Representative William Tuck, Virginia Democrat) which would have denied federal courts jurisdiction over state apportionment. The Tuck Bill died, because it was not passed by the Senate — where Senators were puttering around with Dirksen's proposed amendment to offset, in part, the Warren Court's illegal apportionment decisions.

Legislation like the Tuck Bill, but more comprehensive, is what we need.

Congress should pass a law denying federal courts appellate jurisdiction in all cases involving state apportionment and religious exercises in schools — and voiding all previous Supreme Court decisions in such cases, since the Court heard the cases on appeal without specific congressional authorization.

Congress should impeach Earl Warren. There are grounds for impeaching all justices who participated in these cases; but Warren is the leader and the symbol.

The Constitution stipulates that if a civil officer of the U. S. is impeached for, and convicted of, treason, bribery, or other high crimes and misdemeanors, he shall be removed from office.

In 1868, during impeachment proceedings against President Andrew Johnson, this official definition of impeachable offenses was developed:

**"An impeachable high crime or misdemeanor is one in its nature or consequences subversive of some fundamental or essential principle of government or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of duty, by an act committed or omitted, or, without violating a positive law, by the abuse of discretionary powers from improper motives or for an improper purpose."**<sup>(7)</sup>

Warren (and all other justices who have been on the Court very long) have been accused by fellow justices (in dissenting opinions like Black's in the Butts case), of such impeachable offenses as violating the Constitution, subverting fundamental principles of government, of actions prejudicial to the public interest, abuse of power for improper purposes.

Congress should resubmit the Fourteenth Amendment to the states for *legal* ratification or rejection. Court misinterpretations of this amendment (which is not a valid part of our Constitution) have caused such legal confusion as to render our system of constitutional law almost meaningless — even if federal courts were restrained from further misinterpretation; and even if Earl Warren were impeached as a warning that federal judges must obey and uphold the Constitution.

**A**ll we need to restrain the tyranny of the Supreme Court is action by Congress. If we cannot persuade present members of Congress to do

what is necessary, we should replace them with constitutionalists in 1968.

NEXT WEEK: Details about the illegal Fourteenth Amendment.

## BACKGROUND

Six former eight-page issues of this *Report* (still available at 25¢ each, or all 6 for \$1.00) give detailed information on Supreme Court violations of the Constitution:

"Earl Warren Court," Parts I, II, III, IV, March and April, 1965;

"Outlawing God," March 2, 1964;

"The Supreme Court's Apportionment Decision," August 31, 1964.

## FOOTNOTES

- (1) "The Mississippi Tragedy," *The Dan Smoot Report*, October 8, 1962; "The Wages of Socialism," *The Dan Smoot Report*, October 15, 1962
- (2) Opinion of Justice Harlan in *The Associated Press, Petitioner, v. Edwin A. Walker*, June 12, 1967
- (3) Opinion of Justice Black in *Curtis Publishing Co., Petitioner, v. Wallace Butts*
- (4) AP News Release, June 6, 1967
- (5) Operation Yorkville Newsletter, May, 1967
- (6) *The Dallas Morning News*, June 13, 1967, p. A10
- (7) *The Constitution of the United States of America: Analysis and Interpretation; Annotations of Cases Decided by the Supreme Court of the United States to June 30, 1952*, prepared by the Legislative Reference Service, Library of Congress, published by the Government Printing Office as Senate Document No. 170
- (8) "Proposition 14 Called Unconstitutional: One More Step Toward Government by Judges," *Human Events*, June 10, 1967, p. 11

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